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Hachette Filipacchi Presse

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HACHETTE FILIPACCHI PRESSE,

Plaintiff,

v.

ELIZABETH ANDERSON d/b/a ELLE A
EVENTS,

Defendant.

Civil Action No.

**COMPLAINT
WITH JURY DEMAND**

1 Plaintiff Hachette Filipacchi Presse (“Hachette” or “Plaintiff”), by its
2 undersigned attorneys, McCarter & English, LLP, alleges as its Complaint against
3 Defendant Elizabeth Anderson d/b/a Elle A Events (“Defendant”) as follows:

4 **JURISDICTION AND VENUE**

5 1. This is an action for injunctive relief and damages for trademark
6 infringement, trademark dilution, unfair competition and false designation of origin
7 arising under the Trademark Act of 1946, 15 U.S.C. §§ 1051, et seq. (the “Lanham
8 Act”), and for trademark infringement, trademark dilution, and unfair competition
9 under the laws of the State of California.

10 2. This Court has original jurisdiction over this action pursuant to 28
11 U.S.C. §§ 1331, 1332 and 1338(a) and (b); and 15 U.S.C. §§ 1116 and 1121. This
12 Court has jurisdiction pursuant to the principles of supplemental jurisdiction and
13 28 U.S.C. § 1367 over Hachette’s claims for trademark infringement, trademark
14 dilution, unfair competition under the laws of the State of California.

15 3. This Court has personal jurisdiction over Defendant because
16 Defendant: (a) is present in and transacts business in the State of California; (b) has
17 had continuous, systematic and substantial business contacts with residents of this
18 District; and/or (c) has deliberately created confusion among Hachette’s existing
19 and potential customers, many of whom reside in California.

20 4. Venue is proper in this district under 28 U.S.C. § 1391(c) because this
21 Court has personal jurisdiction over Defendant in this judicial district and a
22 substantial part of the events or omissions giving rise to Hachette’s claims
23 occurred in this District.

24 **THE PARTIES**

25 5. Plaintiff Hachette Filipacchi Presse is a corporation, organized and
26 existing under the laws of France, having its principal place of business at 149 Rue
27 Anatole, Levallois-Perret Cedex, 92534, France.
28

1 6. Upon information and belief, Defendant Elizabeth Anderson is an
 2 individual and a citizen of the United States. Upon information and belief, Ms.
 3 Anderson is offering party and event planning services under the trade name ELLE
 4 A EVENTS and is doing business as ELLE A EVENTS.

5 **FACTS COMMON TO ALL CLAIMS**

6 **A. Hachette's Famous ELLE Trademarks**

7 7. Hachette is the owner of the world famous brand ELLE.

8 8. Since 1945, Hachette, directly and through its predecessors and
 9 licensees, has been engaged in the sale of a wide spectrum of goods and services
 10 under the mark ELLE, alone and with other words, including without limitation the
 11 publication, distribution and sale of the world-famous women's magazine entitled
 12 *ELLE*. This magazine is a unique mixture of fashion, beauty, health,
 13 entertainment, culture, topical events, and food articles.

14 9. *ELLE* magazine was launched in the United States in 1985. *ELLE* is
 15 said to be the world's largest fashion magazine, with 46 international editions in
 16 over 60 countries, and 23 million readers globally. Since its launch *ELLE*
 17 magazine has become one of the most pre-eminent fashion magazines in existence,
 18 replete with articles and advertisements for a wide range of fashion and beauty
 19 related products.

20 10. *ELLE* magazine is extensively promoted nationwide via the Internet,
 21 at newsstands and elsewhere, and enjoys substantial sales and reputation. *ELLE*
 22 magazine features extensive coverage (*e.g.*, articles, photography and
 23 advertisements) concerning parties, entertaining, weddings and other events,
 24 fashion, accessories, beauty tips, cosmetics, make-up and entertainment, as well as
 25 reviews and advertisements regarding events, apparel, accessories, cosmetics and
 26 make-up. *ELLE* magazine also offers its readers fashion, hair, beauty and skin care
 27 information and advice and information related to entertainment and events,
 28

1 including “The ELLE Style Guide to Weddings,” on its website, www.elle.com,
2 and a wedding blog on its website, www.elleuk.com.

3 11. *ELLE* magazine has been regularly distributed in the United States
4 since its launch in 1985. The U.S. edition of *ELLE* magazine is widely circulated
5 in print, with approximately 1.1 million copies sold monthly for a reach of
6 approximately 5.5 million readers. *ELLE* magazine is also digitally available on
7 Opposer’s ELLE.com website, which receives over 6.5 million unique visitors for
8 a total of approximately 25 million pages viewed each month, and, since at least as
9 early as September 2010, on Apple and Android tablets through an ELLE
10 application. ELLE’s application reaches over 40,000 readers each month.
11 Opposer’s ELLE electronic newsletter is circulated weekly to its 130,000
12 subscribers.

13 12. Moreover, *ELLE* magazine is seen by and is familiar to countless
14 more consumers, as it is typically conspicuously displayed and sold at check-out
15 counters in grocery and convenience stores, drugstores, bookstores and other
16 similar retail locations, and is frequently available for reading at offices and spas.

17 13. As one of the most preeminent fashion magazines in existence, replete
18 with articles and advertisements for a wide range of fashion, other products,
19 entertainment and event information, *ELLE* magazine and the ELLE brand have
20 become iconic in the fashion industry.

21 14. In 1989, Opposer launched *ELLE DECOR* magazine in the United
22 States. *ELLE DECOR* magazine is part of the *ELLE DECORATION* network,
23 which is said to be the world’s largest design magazine network, with 25
24 international editions, as well as editions covering 7 other territories. The *ELLE*
25 *DECORATION* network thus covers over 35 countries, and 10 million readers
26 globally. Since its launch *ELLE DECOR* magazine has become one of the most
27 pre-eminent design magazines in existence, featuring extensive coverage (*e.g.*,
28

1 articles, photography and advertisements) concerning interior and exterior
2 decorating, design, celebrity style and party planning.

3 15. *ELLE DECOR* magazine has been regularly distributed in the United
4 States since its launch in 1989. The U.S. edition of *ELLE DECOR* magazine is
5 widely circulated in print and via a digital edition and enjoys substantial sales and
6 reputation. Sales of *ELLE DECOR* magazine reached over half a million readers
7 in the United States since 2013. *ELLE DECOR* magazine is also available on the
8 ELLEDECOR.com website, with 17 million page views and over 1.6 million
9 unique visitors as of August 2016. Moreover, the magazine is seen by and is
10 familiar to countless more consumers, as it is extensively promoted and
11 conspicuously displayed on the Internet, at newsstands, bookstores, convenience
12 stores, drugstores and other similar retail locations, is frequently available for
13 reading at offices and spas.

14 16. Not only are *ELLE* and *ELLE DECOR* famous as magazine
15 publications in the fashion and interior and exterior decorating and design
16 industries, respectively, but the *ELLE* and *ELLE DECOR* marks have also
17 established a strong presence on the Internet through numerous websites,
18 including, but not limited to www.elle.com, www.elleuk.com and
19 www.elledecor.com, each of which has millions of visitors per month. For
20 example, the elle.com website features videos and film clips of ELLE organized
21 and sponsored events, as well as videos and film clips in the fields of fashion and
22 accessories, hair and beauty, pop culture, film, news, life and love, shopping, and
23 other topics of interest, plus links to third-party videos. The elle.com site also
24 offers a video platform with eight channels, which include fashion, celebrity and
25 runway features. Consequently, Hachette's ELLE mark enjoys great media
26 presence.

1 17. The ELLE mark has been extensively used in connection with a wide
2 range of goods and services, including, but not limited to, clothing, shoes, the
3 online publication of books and magazines, cosmetics, perfumes, furniture,
4 electronic applications and goods, including fitness DVDs, videos, iPad
5 applications and mobile applications, appliances such as phone and phone
6 accessories, electronic publications, jewelry, cell phones, hair accessories,
7 entertainment services, watches, eyewear, bags and giftware advice as a natural
8 extension of *ELLE* magazine's focus on fashion, shopping, beauty, pop culture,
9 music, film, entertainment, art and celebrities.

10 18. The ELLE mark has also been used extensively in connection with
11 entertainment related services, events and promotions, as a natural extension of its
12 focus on fashion, pop culture, music, film, art and celebrities. Among these many
13 activities, since 2010 Opposer has organized and sponsored the ELLE Women in
14 Music and ELLE Women in Television events, which honors some of the top
15 female entertainers. Also, Fall 2016 marks the twenty-third year that Opposer has
16 sponsored its ELLE Women in Hollywood event, honoring some of the top female
17 film actresses. These events, which are organized and held in California, are
18 widely reported in internationally distributed media such as *USA Today*, *The*
19 *Hollywood Reporter*, *Variety*, *Celebrity Gossip*, *The Los Angeles Times*, *The*
20 *Huffington Post*, *The Denver Post*, *YouTube* and, of course, in *ELLE* magazine and
21 in elle.com and other widely distributed publications and websites. Indeed, *ELLE*
22 magazine devotes entire issues of the magazine to the ELLE Women in
23 Hollywood, ELLE Women in Television and ELLE Women in Music events, as
24 well as features content from those events on the elle.com website.

25 19. Since at least as early as 1965, and prior to any date upon which
26 Defendants can rely, Hachette, through its licensee, has used in commerce the
27 trademark ELLE for clothing, resulting in millions of dollars of sales of such
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1 merchandise in the United States. For example, ELLE apparel is sold nationwide
2 at Kohl's retail establishment and via the kohls.com website.

3 20. The ELLE mark is universally recognized as a distinct brand
4 associated with inspiring women and girls to create and embrace their own style as
5 well as other positive values in modern society. On account of this reputation,
6 Hachette enjoys a prominent following on numerous social media channels,
7 including, but not limited to, Facebook, Twitter, Pinterest, Instagram, YouTube
8 and Google+. For example, there are various Facebook pages dedicated to
9 Hachette, including *ELLE Magazine (US)*, *ELLE* and *ELLE DECOR Magazine*,
10 among others. The numbers for all of Hachette's social media platforms for both
11 *ELLE* magazine and *ELLE DECOR* magazine have continued to grow year over
12 year whereby today Hachette has a total of 15.9 million friends and fans via social
13 media for *ELLE* magazine and over 6 million social media followers for *ELLE*
14 *DECOR* magazine.

15 21. Hachette owns numerous trademark registrations and applications for
16 its family of ELLE-formative marks covering various goods and services
17 (collectively, "Hachette's Goods and Services"), identified in **Exhibit A** hereto
18 (collectively, the "ELLE Marks"), including, but not limited to, U.S. Registration
19 No. 0758137, for the mark ELLE, claiming first use in 1945.

20 22. In particular, Hachette owns U.S. Registration No. 4,284,558 for the
21 trademark ELLE in connection with a variety of goods and services, including
22 "services for the public entertainment, namely, organization of shows for cultural
23 purposes; organization of conferences, forums, congresses, colloquiums in the
24 fields of fashion, beauty, entertainment, cooking, music, theater, cinema, literature,
25 arts, education, home decoration, gardening, landscaping, media for non business
26 purposes," in Class 41, and "providing an online service featuring photographs and
27 other multimedia materials in the fields of entertainment," in Class 41. A copy of
28

1 the Certificate of Registration for U.S. Registration No. 4,284,558 is included in
2 Exhibit A hereto. This mark has been in use since at least as early as 1996 in
3 connection with the organization of various events, including, but not limited to,
4 ELLE WOMEN IN HOLLYWOOD, ELLE WOMEN IN MUSIC and ELLE
5 WOMEN IN TELEVISION.

6 23. Many of the registrations for the ELLE Marks are incontestable,
7 including U.S. Registration Nos. 0758137, 0861159, 1429609, 2120688, 2199132,
8 2242315, 3727498, 3745516, 4284558, 1668272 and 1732988.

9 24. All of the registrations for the ELLE Marks are valid and subsisting,
10 unrevoked and uncanceled, and are prima facie evidence of the validity of
11 Hachette's exclusive right to use the ELLE Marks in commerce in connection with
12 the goods and services described in the registrations, without condition or
13 limitation, and constitute constructive notice of Hachette's ownership of the ELLE
14 Marks for the goods and services described in the registrations, as provided for by
15 Sections 7(b) and 22 of the Lanham Act, 15 U.S.C. §§ 1057(b) and 1072.

16 25. As a result of Hachette's many years of effort advertising, promoting,
17 marketing and selling magazines and other products in connection with the ELLE
18 Marks, the ELLE Marks have become famous marks entitled to the utmost
19 protection.

20 26. The Trademark Trial and Appeal Board has determined that
21 Hachette's mark ELLE "is famous in connection with its magazine and within the
22 fashion industry generally, and is entitled to broad protection." *Hachette*
23 *Filipacchi Presse v. Ev Int'l, LLC*, Opposition No. 91174433 (Sept. 5, 2008). A
24 true and correct copy of this decision is attached hereto as **Exhibit B**.

25 27. To date, Hachette has invested significant time and effort advertising
26 and promoting its magazines and products bearing the ELLE Marks in the United
27 States and throughout the World, and Hachette prominently displays the distinctive
28

1 ELLE Marks in its advertising and promotional materials. Hachette's efforts in
2 this regard have resulted in widespread recognition of the ELLE Marks. For
3 example, as of 2012, *ELLE* magazine experienced 262 million press impressions
4 each month. This number has grown significantly year over year, whereby as of
5 2016, *ELLE* receives 1.5 billion press impressions each month.

6 28. As a result of Hachette's extensive efforts, Hachette has enjoyed
7 significant circulation of its magazines bearing the ELLE Marks and significant
8 sales of products bearing the ELLE Marks over the many years that the ELLE
9 Marks have been used by Hachette.

10 29. As a result of the extensive advertising of *ELLE* magazine and ELLE-
11 branded products and services in the United States, and the widespread sale and
12 success of *ELLE* magazine and *ELLE*-branded products and services in the United
13 States, the public, consumers, and the trade generally have come to associate the
14 distinctive ELLE Marks with magazines, apparel and other products and services
15 of exceptional quality, materials, style, and reliability, and have come to recognize
16 that magazines, apparel and other products and services bearing the ELLE Marks
17 originate from Hachette.

18 30. Hachette's sales of its *ELLE* magazine and ELLE-branded products
19 have been significant. Between 2007 and 2012, Hachette sold approximately \$900
20 million worth of *ELLE* magazines, ELLE-branded fashion products, including
21 clothing, and cosmetics in the United States.

22 31. Hachette's licensed fashion items have generated revenues of over
23 one billion dollars in retail stores within an average of \$650 million annually
24 between 2005 and 2009. Between 2007 and 2012, Opposer and its retail partners
25 have spent more than 15 million dollars to promote the sale of *ELLE* magazines,
26 ELLE-branded fashion products and cosmetics.

1 32. In addition, Hachette and *ELLE* magazine and *ELLE DECOR*
2 magazine have won numerous awards. For example, *ELLE* magazine was
3 recognized as the 2008 Magazine of the Year, awarded by the Accessories
4 Council, and received three awards for editorial excellence by the Fragrance
5 Foundation in 2011. Hachette was also selected as 2009's Most Engaged Media
6 Brands. In 2010, *ELLE DECOR* was ranked number eight on the Advertising Age
7 A-List. In 2011, *ELLE DECOR* was ranked number three on Adweek's Hot List
8 and was named a Circle of Success Winner by CircMatters. In 2012, Hachette and
9 *ELLE* magazine received several awards, including, but not limited to, the FiFi
10 Award for Editorial Excellence, Best Site Redesign from the MIN Editorial &
11 Design Awards, Best Cover & Best Editor's Letter from the Huffington Post,
12 Runner Up for Magazine Publisher of the Year from the Delaney Report,
13 Marketing and Media Awards, Honorable Mention for Best Online feature from
14 the MIN Editorial & Design Awards, and Elle magazine was also recognized was
15 Digitally 'Gifted' by L2 Digital Think Tank. In 2013, *ELLE* magazine and
16 Hachette were ranked number five on the Advertising Age A-List and won an
17 award for Creative Director of the Year from The Daily.

18 33. The ELLE mark is vital to Hachette and represents not only
19 Hachette's products and services, but also its reputation. Hachette will suffer
20 irreparable harm if third parties, including the Defendant herein, are allowed to
21 trade off Hachette's reputation and goodwill by promoting, offering for sale and
22 selling goods and services bearing marks confusingly similar to the ELLE mark.

23 **B. The Defendant's Conduct**

24 34. Upon information and belief, Defendant made first use in commerce
25 of the trade name and trademark ELLE A EVENTS (the "Infringing Mark") on or
26 about September 19, 2012. Attached hereto as **Exhibit C** are examples of
27 Defendant's use of the Infringing Mark.
28

1 35. Upon information and belief, since at least as early as September 19,
2 2012, Defendant has been advertising, promoting, marketing, offering for sale,
3 selling and/or providing party and event planning services (“Defendant’s
4 Services”) under the Infringing Mark, which is confusingly similar to Hachette’s
5 ELLE Marks.

6 36. Upon information and belief, on March 22, 2013 Defendant filed an
7 application with the United States Patent and Trademark Office to register the
8 mark ELLE A EVENTS, which was assigned Serial No. 85883465 (“Defendant’s
9 Trademark Application”). Defendant’s Trademark Application covered “Party and
10 wedding reception planning, coordination and consultation services; Providing
11 information in the field of wedding party planning; Providing information
12 regarding wedding reception planning for wedding parties; Party planning
13 consultation; Party planning” in International Class 41 and claimed a first use date
14 of August 1, 2012 and a first use in commerce date of September 19, 2012.

15 37. Hachette opposed the registration of Defendant’s Trademark
16 Application in the Trademark Trial and Appeal Board (“TTAB”) of the United
17 States Patent and Trademark Office. On October 22, 2014, the TTAB entered
18 judgment against Defendant. In its decision, the TTAB sustained the notice of
19 opposition and refused registration of Applicant’s ELLE A EVENTS mark.

20 38. Upon information and belief, Defendant’s use of the Infringing Mark
21 in connection with Defendant’s Services infringes the ELLE Marks and alludes to
22 Hachette, *ELLE* magazine, *ELLE DECOR* magazine and services offered by
23 Hachette in connection with the ELLE Marks, thereby trading upon Hachette’s
24 goodwill.

25 39. Defendant’s use of the Infringing Mark on or in connection with the
26 advertising, marketing, offer for sale, sale and provision of Defendant’s Services is
27 likely to cause consumers to mistakenly believe that Defendant’s Services, offered
28

1 in connection with the Infringing Mark, emanate from or are authorized and/or
2 approved by Hachette.

3 40. Defendant, without authorization or license from Hachette, has
4 adopted and is using the Infringing Mark, which includes the term ELLE as the
5 primary and dominant term, in connection with party and event planning services.
6 Attached hereto as **Exhibit D** is a true and correct copy of a printout of excerpts of
7 Defendant's website.

8 41. Upon information and belief, Defendant's Services travel in the same
9 channels of trade as Hachette's Goods and Services.

10 42. Upon information and belief, Defendant's Services are intended for
11 consumption by the same types of consumers that purchase Hachette's Goods and
12 Services offered in connection with the ELLE Marks.

13 43. Defendant's use of the Infringing Mark on or in connection with the
14 advertising, marketing, offering for sale, sale and/or provision of Defendant's
15 Services is causing irreparable harm to Hachette.

16 **COUNT ONE**

17 **FEDERAL TRADEMARK INFRINGEMENT**

18 **(15 U.S.C. § 1114)**
19

20 44. Hachette repeats and re-alleges the allegations of each of the
21 foregoing paragraphs of this Complaint as if fully set forth herein.

22 45. Hachette's ELLE Marks and the goodwill of the business associated
23 with those marks in the United States and throughout the world are of great and
24 incalculable value.

25 46. The ELLE Marks are highly distinctive and arbitrary, and have
26 become universally associated in the public mind with the fashion magazines and
27 products of the very highest quality and reputation, emanating from Hachette.
28

47. Upon information and belief, without Hachette's authorization or consent, and having knowledge of Hachette's well-known and prior rights in the ELLE Marks, Defendant has advertised, promoted, distributed, offered for sale and/or sold Defendant's Services in connection with the Infringing Mark to the consuming public, thereby affecting interstate commerce.

48. Upon information and belief, Defendant's use of the Infringing Mark in connection with Defendant's Services is likely to cause and has already caused confusion, mistake and deception among the general purchasing public as to the origin of Defendant's Services, and is likely to deceive the public into believing that Defendant's Services being offered and sold by Defendant originate from, are associated with, or are otherwise authorized by, Hachette, all to the damage and detriment of Hachette's reputation and goodwill.

49. Hachette has no adequate remedy at law and, if Defendant's infringing activities are not enjoined, Hachette will continue to suffer irreparable harm and injury to its goodwill and reputation.

COUNT TWO

FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION

(15 U.S.C. § 1125(a))

50. Hachette repeats and re-alleges the allegations of each of the foregoing paragraphs of this Complaint as if fully set forth herein.

51. Defendant's Services offered and sold by Defendant are of the same general nature and type as services offered and sold by Hachette under the ELLE Marks and, as such, are likely to cause confusion to the general purchasing public.

52. By using the Infringing Mark, which includes the term ELLE as the primary and dominant term, Defendant misrepresents and falsely describes to the general public the origin and source of Defendant's Services, thereby creating a

1 likelihood of confusion among consumers as to both the source and sponsorship of
2 such merchandise.

3 53. Defendant's unlawful, unauthorized and unlicensed offer for sale,
4 sale, and/or provision of Defendant's Services in connection with the Infringing
5 Mark falsely represents to consumers that Defendant's Services are associated
6 with, authorized by or approved by Hachette, all to Defendant's profit and
7 Hachette's great damage and injury.

8 54. Defendant's aforesaid acts are in violation of § 43(a) of the Lanham
9 Act, 15 U.S.C. § 1125(a), in that Defendant's use of the Infringing Mark, in
10 connection with Defendant's Services, in interstate commerce constitutes a false
11 designation of origin and unfair competition.

12 55. Hachette has no adequate remedy at law and, if Defendant's activities
13 are not enjoined, Hachette will continue to suffer irreparable harm and injury to its
14 goodwill and reputation.

15 **COUNT THREE**
16 **FEDERAL TRADEMARK DILUTION**
17 **(15 U.S.C. § 1125(c))**
18

19 56. Hachette repeats and re-alleges the allegations of each of the
20 foregoing paragraphs of this Complaint as if fully set forth herein.

21 57. Hachette's ELLE Marks are widely recognized by the general
22 consuming public in the United States as a singular designation of the source of
23 Hachette's goods and services and thus are "famous marks" within the meaning of
24 § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and were famous marks prior to
25 Defendant's conduct as alleged herein.

26 58. Defendant's marketing, offer for sale, provision and/or sale in
27 commerce of Defendant's Services is likely to and does dilute the distinctive
28

1 quality of the ELLE Marks, and was done, upon information and belief, with the
2 willful intent to trade on Hachette's reputation and/or to cause dilution of the
3 ELLE Marks.

4 59. Defendant's unauthorized use of the Infringing Mark in connection
5 with Defendant's Services was done with notice and full knowledge that such use,
6 distribution, provision, sale and/or offer for sale was not authorized or licensed by
7 Hachette.

8 60. Defendant's aforesaid acts are in knowing and willful violation of
9 Hachette's rights under § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

10 61. Hachette has no adequate remedy at law and, if Defendant's activities
11 are not enjoined, will continue to suffer irreparable harm and injury to Hachette's
12 goodwill and reputation.

13 **COUNT FOUR**

14 **TRADEMARK INFRINGEMENT UNDER CALIFORNIA LAW**

15
16 62. Hachette repeats and realleges the allegations of each of the foregoing
17 paragraphs of this Complaint as if fully set forth herein.

18 63. Defendant has, without authorization from Hachette, adopted and used
19 the Infringing Mark, which infringes the ELLE Marks to advertise, market, offer
20 for sale, sell and provide Defendant's Services.

21 64. Defendant's acts as alleged herein are likely to cause confusion,
22 mistake, and deception to consumers as to the affiliation, connection, or
23 association of Defendant with Hachette, and as to the origin, sponsorship, or
24 approval of Defendant's Services by Hachette.

25 65. Defendant's unauthorized acts constitute direct infringement of the
26 ELLE Marks in violation of California common law.

66. Upon information and belief, Defendant's conduct is intentional, malicious, and wanton in that Defendant infringed and continues to infringe the ELLE Marks (i) with full knowledge that Hachette owns and has the exclusive right to use the ELLE Marks, (ii) with the intention of causing a likelihood of confusion and mistake and to deceive, and (iii) with the intention of unfairly competing with Hachette. Further, Defendant had notice from Hachette to cease its infringing activities, yet chose to continue its infringing activities.

67. Hachette has suffered, is suffering, and will continue to suffer irreparable injury for which Hachette has no adequate remedy at law. Hachette therefore is entitled to temporary, preliminary and permanent injunctive relief against Defendant's further infringing conduct.

COUNT FIVE

FALSE ADVERTISING UNDER CALIFORNIA STATE LAW
[CALIFORNIA BUS. & PROF. CODE §§ 17500 AND 17535]

68. Hachette repeats and re-alleges the allegations of each of the foregoing paragraphs of this Complaint as if fully set forth herein.

69. From its offices in California, Defendant has, upon information and belief, disseminated or caused to be disseminated advertisements and solicitations for Defendant's Services featuring the Infringing Mark to advertise and promote Defendant's Services. In doing so, Defendant has falsely represented that there is an association, affiliation, connection or relationship with Hachette. No such association, affiliation, connection or relationship exists between Hachette and Defendant.

70. Defendant's acts as alleged herein constitute the use of deceptive, untrue and misleading advertising, of which Defendant knew or should have known, thereby impairing Hachette's goodwill and otherwise adversely affecting

1 Hachette's business and reputation. These acts constitute false advertising under
2 California Business and Professions Code §§ 17500 and 17535, and California
3 common law.

4 71. Money damages will not adequately remedy Hachette's injuries.
5 Hachette therefore is entitled to temporary, preliminary and permanent injunctive
6 relief prohibiting Defendant from continuing such acts of false and misleading
7 advertising.

8 72. Hachette also is entitled to damages, Defendant's profits, and other
9 remedies according to proof at trial, including costs and attorneys' fees.

10 **COUNT SIX**

11 **UNFAIR COMPETITION UNDER STATE LAW**

12 **[CALIFORNIA BUS. & PROF. CODE §§ 17200 AND 17203]**

13
14 73. Hachette repeats and re-alleges the allegations of each of the
15 foregoing paragraphs of this Complaint as if fully set forth herein.

16 74. The ELLE Marks are wholly associated with Hachette due to its
17 extensive use of the ELLE Marks. As such, Hachette is deserving of having the
18 ELLE Marks adequately protected with respect to the conduct of its business.

19 75. Defendant's wrongful conduct as alleged herein constitutes unfair
20 competition and unfair business practices.

21 76. Based on the wrongful, unlawful, fraudulent and unfair acts described
22 herein, Defendant is in violation of California Business and Professions Code
23 §§ 17200 and 17203.

24 77. Hachette has suffered, is suffering, and will continue to suffer
25 monetary loss as a result of Defendant's unfair business practices.

26 78. Hachette has suffered, is suffering, and will continue to suffer
27 irreparable harm and injury for which Hachette has no adequate remedy at law.
28

1 Hachette therefore is entitled to temporary, preliminary and permanent injunctive
2 relief against further unfair conduct by Defendant.

3 79. Defendant has profited and is profiting from such unfair conduct.

4 80. Hachette therefore is entitled to recover restitution in the form of
5 Defendant's profits, in an amount to be proved at trial, as a consequence of
6 Defendant's wrongful activities.

7 **COUNT SEVEN**

8 **UNFAIR COMPETITION UNDER STATE LAW**

9 **[CALIFORNIA LAW]**
10

11 81. Hachette repeats and re-alleges the allegations of each of the
12 foregoing paragraphs of this Complaint as if fully set forth herein.

13 82. The ELLE Marks are wholly associated with Hachette due to its
14 extensive use of the ELLE Marks. As such, Hachette is deserving of having the
15 ELLE Marks adequately protected with respect to the conduct of its business.

16 83. Defendant's aforesaid conduct has been wrongful, unlawful, unfair,
17 fraudulent, willful, wanton and malicious, done with intent, and in conscious
18 disregard for the rights of Hachette in violation of California Civil Code § 3294(a).
19 Hachette therefore is entitled to punitive damages pursuant to California Civil
20 Code § 3294(a).

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Hachette prays that this Court enter judgment against
23 Defendant as follows:

24 1. That Defendant and Defendant's agents, servants, employees,
25 attorneys, and all persons acting for, with, by, through or under them be
26 permanently enjoined and restrained from:
27
28

1 (a) using in any manner any of Hachette's ELLE Marks, the
2 Infringing Mark, any mark that includes the term ELLE, or any other mark which
3 so resembles the ELLE Marks as to be likely to cause confusion, deception, or
4 mistake on or in connection with the advertising, offering for sale, sale or provision
5 of any services not emanating from Hachette, or not authorized by Hachette to be
6 sold in connection with the ELLE Marks, including but not limited to Defendant's
7 Services;

8 (b) passing off, inducing, or enabling others to sell or pass off any
9 services as and for services offered by Hachette, when such services are not in fact
10 Hachette's services, or are not offered or produced under the control and
11 supervision of Hachette and approved by Hachette for sale under any of the ELLE
12 Marks;

13 (c) committing any acts calculated to cause purchasers to believe that
14 Defendant's Services are those sold under the control and supervision of Hachette,
15 or sponsored or approved by, or connected with, or guaranteed by, or produced
16 under the control and supervision of Hachette;

17 (d) further diluting and infringing any of the ELLE Marks and
18 damaging Hachette's goodwill;

19 (e) from otherwise competing unfairly with Hachette in any manner;
20 and

21 (f) shipping, delivering, distributing, returning or otherwise disposing
22 of, in any manner, advertising and promotional material bearing the Infringing
23 Mark, any mark that includes the term ELLE, any of the ELLE Marks, or any
24 mark confusingly similar thereto.

25 2. That Defendant be required to deliver up to Hachette any and all
26 advertising matter, promotional, and other materials in the possession of Defendant
27
28

1 or under Defendant's control bearing the Infringing Mark, any mark that includes
2 the term ELLE and/or any mark that is confusingly similar to the ELLE Marks.

3 3. That Defendant, within thirty (30) days after service of judgment with
4 notice of entry thereof upon it, be required to file with the Court and serve upon
5 Hachette a written report under oath setting forth in detail the manner in which
6 Defendant has complied with paragraphs 1 through 2, *supra*.

7 4. That Defendant account for and pay over to Hachette all profits
8 realized by the Defendant by reason of Defendant's unlawful acts herein alleged
9 and, that the amount of damages for infringement of Hachette's registered
10 trademarks be increased by a sum not exceeding three times the amount thereof as
11 provided by law.

12 5. That Hachette be awarded actual damages of an amount to be proven
13 at trial.

14 6. That Hachette be awarded interest, including pre-judgment interest, on
15 all sums.

16 7. That Hachette be awarded reasonable attorneys' fees and have such
17 other and further relief as the Court may deem equitable.

18 8. That Hachette have such other and further relief as the Court deems
19 just and proper.

20 Dated: April 27, 2017

21 **OWEN, WICKERSHAM & ERICKSON, P.C.**

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JURY DEMAND

Hachette demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure for all issues so triable.

Dated: April 27, 2017 **OWEN, WICKERSHAM & ERICKSON, P.C.**

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